

LEASE AGREEMENT  
BETWEEN  
DANIEL, DANIEL AND DANIEL, LTD.  
AND  
MONTGOMERY COUNTY, MARYLAND

DATED: 10/29/99

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LEASE AGREEMENT

This Lease, made and executed this 29<sup>th</sup> day of October 1999, by and between, DANIEL, DANIEL AND DANIEL, a Washington, D.C. limited partnership hereinafter referred to as "Landlord", and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic, hereinafter referred to as "Tenant".

WITNESSETH:

That for and in consideration of the rents hereinafter reserved and the agreements and covenants herein contained, Landlord and Tenant agree as follows:

1. PREMISES: Landlord does hereby lease and demise unto Tenant, and Tenant does hereby lease and take from the Landlord, the shopping center store premises deemed to contain 4,660 square feet of rentable area, known as 16535 and 16537 South Frederick Road, Gaithersburg, Maryland, and which shopping center store premises is hereinafter referred to as the "Leased Premises". The Leased Premises is located in the Walnut Hill Shopping Center (Center). The Leased Premises includes the right to use the back doors. Tenant accepts the Leased Premises in an "AS-IS" condition except for the improvements by the Landlord stated in Lease Addendum #2 - Improvements. The parties further agree to comply with all terms in Lease Addendum #3- Shopping Center Provisions.

2. TERM: The Lease "Term" hereby created is FIVE years and SIX months. The "Starting Date" is November 1, 1999 and the "Ending Date" is April 30, 2005. Tenant may extend the Term only by Lease Addendum #1: Tenant's Option to Extend Term.

Landlord shall not be liable for any late delivery of the Premises caused by any events or persons not under Landlord's direct control, including but not limited to: any permit, utility, or fire department official; material shortage; labor unrest; utility stoppage; holdover by existing tenant;

or act of God. Rent shall not be due until Landlord delivers the substantially complete Premises to Tenant.

If Tenant takes possession early, then the Lease shall be in force, but rent shall not start until the Starting Date, which, along with the Ending Date, shall not change.

3. RENT:

A. Payment. Tenant shall pay to Landlord all rent in United States currency, without any deduction, set-off, notice, demand, and, unless stated otherwise, billing. Tenant shall pay all Base Rent Installments in advance by the first day of each calendar month.

All money shall be paid to:

DANIEL, DANIEL, AND DANIEL

P.O. Box 79876

Baltimore, Maryland 21279-0876

or any other address or party as Landlord may direct in writing.

B. Tenant shall pay total "Base Rent" over the 5 year, 6 month term, of \$371,112.00 (exclusive of Section 3D."Additional Rent") in monthly "Base Rent Installments" according to the following "Base Rent Schedule".

Base Rent Schedule

Period	Starting Date	No. of Months	Base Rent Install- ment (\$)	Annual Base Rent (\$)
First 6 months	11/01/99	6	0.00	0.00
Lease Year 1	05/01/00	12	5,825.00	69,900.00

Lease Year 2	05/01/01	12	6,000.00	72,000.00
Lease Year 3	05/01/02	12	6,180.00	74,160.00
Lease Year 4	05/01/03	12	6,365.00	76,380.00
Lease Year 5	05/01/04	12	6,556.00	78,672.00
Total Base Rent only				\$371,112.00

- C. First Payment. On signing this Lease, Tenant shall pay the Monthly Base Rent Installment for May 2000. Subsequent monthly payments shall resume in June 2000, according to the above Base Rent Schedule.
- D. Additional Rent. All money due Landlord other than Base Rent is "Additional Rent". Unless stated otherwise, Tenant shall pay Additional Rent within 10 business days of receipt and acceptance of invoice. Landlord's remedies for the non-payment of Additional Rent are the same as for Base Rent.
- E. Late Payment and Returned Checks. The Landlord shall send Tenant monthly invoices during the last week of the preceding month for any payment due the next month. If (a) Landlord does not receive any Monthly Base Rent Installments by 5:00 PM on (1) the TENTH day of the month it is due or (2) if the tenth falls on a weekend or national holiday, the next business day, or (b) Landlord does not receive any Additional Rent by the tenth day after it is due, then Tenant shall pay (a) an additional 6% of the amount due for the first full or partial calendar month it remains not received and (b) then, starting on the first day of the following calendar month, interest assessed daily at the annual rate of the lesser of (a) 18% or (b) the highest

legal rate. Tenant shall also pay an additional 10% of the check amount each time a check is returned unpaid. These additional payments shall not extend any due date, waive any of Landlord's rights, nor cure any default.

G. Survival. Regardless of the Ending Date or earlier end of the Term (collectively, "Term End"), Tenant shall promptly and fully perform all its Lease obligations.

H. Deposit. Tenant shall NOT pay a deposit.

I. Promotional Fund. Tenant shall pay (in advance by July 1) an "Annual Promotional Assessment" (APA) to the Landlord of 1.0% of the next 12 months' total Base Rent. Tenant's first APA payment (prorated) of \$699.40 is due at lease signing. Tenant's next APA payment is due July 1, 2000.

4. UTILITIES: Tenant shall pay directly to the provider for all its utilities, services, and associated equipment, including but not limited to, electricity, gas, telephone, trash removal and dumpster, water, and sewer. Because the Leased Premises is formed by the merger of two existing and separate stores, the Leased Premises is served by multiple utility meters and accounts. Tenant shall transfer all accounts to itself on Tenant's possession of the Premises, which shall be upon Tenant's receipt of keys to the Premises and a signed letter of acceptance of the demised premises by the Tenant. In no event shall Landlord be liable for any interruption or failure in the supply of utilities to the Leased Premises, unless Landlord's specific actions or omission prevents Tenant from receiving the utilities.

5. MAINTENANCE OF LEASED PREMISES:

A. Landlord's Maintenance and Replacements. Within a reasonable time after notification, Landlord shall make all necessary maintenance, repairs, and replacements only to the following Landlord's Replacements items: (1) all roof water protection, including the roof, flashing, gutters, downspouts, and roof drains; (2) all exterior masonry walls, interior columns, roof, interior

concrete slabs, and all foundations; (3) all utility services outside the Premises, up to the point where the services pass through, under, or above the exterior walls of the Premises; and (4) all site improvements, including the exterior walkway cover, paving, sidewalks, curbs, gutters and storm water drainage, parking lot lighting, and landscaping.

- B. Tenant's Replacements. Tenant shall promptly perform all maintenance, repairs, and replacements to the Tenant's Replacements items, which include but are not limited to (1) storefronts, including but not limited to metal frames, glass, and sealants; (2) all doors, including but not limited to doors, door frames, door hardware, closers, door weather stripping, and glass; (3) all finishes and interior improvements, including but not limited to partitions, doors, paint, floor coverings, ceiling tiles and ceiling grids; (4) all utilities inside the Premises, from the point where the services pass through, under, or above the exterior walls of the Premises; (5) all HVAC systems serving the Premises; and, (6) all plumbing, sprinkler, and electrical systems and equipment within the exterior walls of the Premises as extended above and below. Tenant shall keep Tenant's Replacements in a good and workman-like manner and with materials as good as or better than the existing.
- C. HVAC. If the Tenant is Montgomery County, then Tenant may maintain the HVAC system through a County contractor without Landlord's approval. If the Tenant is not Montgomery County, then Tenant shall maintain the HVAC equipment under a service contract with Muir Service Company or any other qualified HVAC contractor as Landlord may reasonably approve. Notwithstanding the above paragraph 5(B), the Landlord shall replace, but one time only, each component of the HVAC system as that component reaches the end of its useful life.
- D. Damage. Notwithstanding anything in this Lease to the contrary, Tenant shall perform all maintenance, repair, or replacement of any improvements caused

by (a) Tenant's negligence, abuse, misuse, or neglect or (b) the moving of anything in or out of the Premises.

6. USE:

- A. Tenant warrants and agrees that the leased premises shall be used as a retail liquor store and for no other purpose whatsoever.
- B. The use and occupation by the Tenant of the leased premises shall include the use in common with others entitled thereto of the common areas, parking areas, service roads, loading facilities, sidewalks, and other facilities as may be designated from time to time by the Landlord, subject however to the terms and conditions of this agreement and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.

Restrictions. Tenant and Tenant's employees, agents, invitees, licensees, customers, clients, family members, and guests shall not do anything that (a) would reasonably be deemed to interfere with Landlord's or any other tenant's use and enjoyment of the Premises or Center, (b) annoy other tenants, visitors, or Landlord; or (c) is hazardous to others, disorderly, obscene, or pornographic. Animals are prohibited on the Premises, except for service dogs for the handicapped with their user.

Parking. Landlord, at its sole discretion, may repair, re-pave, relocate, reconfigure, diminish, and eliminate parking spaces or areas provided this does not unreasonably interfere with Tenant's use of the Premises. Tenant has reasonable and non-exclusive use of the undesignated parking spaces and driveways at the Center; however, Tenant shall ensure that nothing is parked or placed at the Center which the Landlord, in Landlord's sole discretion, deems to detract from the Center's appearance, including but not limited to, trucks, junked vehicles, vehicles under repair, and vehicle parts. Tenant shall prevent any vehicles from remaining on the parking lot overnight.

Trash. Tenant shall keep the Premises clean, store trash in appropriate containers at a location approved in advance by Landlord, hire a trash remover, and promptly clean the Premises of any - debris and trash.

Outside. Tenant shall not (a) store anything outside the Premises, and (b) change the Center's or Premises' appearance in any way.

Improvements. Except for low-voltage electric wiring, including but not limited to phone and security systems, and minor interior decorating such as painting and wallpapering, Tenant shall not alter the Premises in any way without the prior written consent of the Landlord, which, provided Tenant is not in default, Landlord shall not unreasonably withhold, condition, or delay.

7. COMMON AREAS: "Common Area cost" shall mean all costs and expenses of every kind and nature paid or incurred by Landlord in the operation, replacement, improvement, maintenance, repair, redecoration and refurbishment of Common Areas. For purpose of this Section, said costs shall include, but not be limited to, costs of materials, supplies, equipment and services purchased or hired, cost and expense of landscaping, gardening, planting, cleaning, painting, striping parking areas, decorating, repaving, lighting, sanitary control, removal of snow, ice, trash, garbage and other refuse, heating, ventilating and air-conditioning of enclosed areas, fire and security protection, water and sewer charges, public liability, fire and casualty insurance, electricity and other utility services, depreciation of machines, equipment and improvements, cost of personnel employed at the Shopping Center (including applicable payroll taxes, workmen's compensation and liability insurance benefits, fringe benefits and costs), payments to governmental authorities, costs of complying or conforming with rules and regulations of governmental authorities, Fire Insurance Rating Organizations, Board of Fire Underwriters, insurance carriers and other organizations having jurisdiction over the Shopping Center, and Landlords administrative costs which shall be equal to fifteen percent ( 15 %) of the total of other Common Area Costs.

Tenant's Pro Rata Share. For Sections 7 and 8, Tenant's Share is determined *pro rata* by gross rentable area (GRA). The Center contains 95,026 square feet of GRA; Tenant's Share is deemed to be 5% of that GRA. Landlord may reasonably and fairly modify Tenant's Share, *pro rata*, to reflect any reasonable change in billing by third parties or the GRA of the Center, including but not limited to (a) increases or reductions caused by construction or demolition, (b) transfers to third parties, and (c) loss of rentable space by permanent casualty or condemnation.

8. REAL ESTATE TAXES:

- A. Tenant agrees to pay, as additional rent hereunder in equal monthly payments, a sum equal to Tenant's proportionate share of all real estate taxes which may be levied or assessed by lawful taxing authorities against the land, buildings and all improvements in the shopping center.
- B. "Real estate taxes" shall be deemed to mean all city, county, town and village taxes, special or general, ordinary or extraordinary, assessments, excises, levies, and other governmental charges which shall be imposed upon or become due and payable or become a lien upon the premises or any part thereof, during the period of time covering this Lease Agreement between Landlord and Tenant, by any Federal, state municipal, or other governmental or public authority under existing law, or practice or under any future law or practice, and costs and expenses incurred in contesting or negotiating an adjustment thereof. The real estate taxes for any calendar year shall mean the real estate taxes actually paid or due to be paid during such calendar year, whether or not such real estate taxes related to such calendar year or a fiscal year.
- C. Tenant's proportionate share of real estate taxes shall be determined for each calendar year by multiplying the real estate taxes for such calendar

year by a fraction, the numerator of which shall be the floor area of the premises rented to the Tenant, and the denominator of which shall be the floor area of all rentable space in the Center. Tenant's liability for Tenant's proportionate share of real estate taxes and assessments for the calendar years during which this lease commences and terminates shall in all events be subject to a pro rata adjustment based on the number of days of said calendar year during which the term of this lease is in effect. Landlord and Tenant agree Tenant's pro rata share of said real estate taxes for the Center is currently 5 %.

- D. If the operation of any foregoing provisions result in payment of Tenant's proportionate share of real estate taxes for calendar years extending beyond the term of this lease, Landlord, within thirty (30) days following the expiration of the term of this lease, shall reimburse Tenant any such amount, less amounts then due Landlord from Tenant.
- E. A copy of a tax bill or assessment bill from the taxing or assessing authority that is then submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of taxes and/or assessments assessed or levied against the property to which such bill relates. Landlord's and Tenant's obligations under this paragraph shall survive the expiration of the term of this Lease for any obligations which accrued during the term of this Lease.
- F. In the event that any present or future enactment of any state or political subdivision thereof or any governmental authority having jurisdiction thereover: (a) imposes a tax and/or assessment of any kind or nature upon, against or with respect to the rents payable by tenants in the shopping

center to Landlord derived from the shopping center or with respect to the Landlord's (or lessor's) ownership of the land and improvements comprising the shopping center, either by way of substitution for all or any part of the taxes and assessments levied or assessed against such land and such improvements, or in addition thereto; and/or (b) imposes a tax or surcharge of any kind or nature, upon, against or with respect to the parking areas or the number of parking spaces in the shopping center, such tax, assessment and/or surcharge shall be deemed to constitute real estate taxes for the purpose of this Section 8 and Tenant shall be obligated to pay its' proportionate share.

9. TENANT'S MONTHLY CENTER COST INSTALLMENT: For Sections 7 and 8, Tenant shall pay Tenant's Share of the Landlord's reasonable estimate of the Annual Center Costs in equal monthly Monthly Center Cost Installments (MCCI). Tenant shall pay each MCCI in advance by the first day of each calendar month of the Term and without invoice. Starting when Tenant starts paying Base Rent, Tenant shall pay an MCCI of \$932.00 per month until Landlord revises its estimate of the Annual Center Costs.

10. ASSIGNMENT: If the Lease is assigned because of privatization, then Montgomery County shall remain liable for the Lease until the assignee has either (a) a net asset value, excluding goodwill, in excess of \$1,000,000, or (b) gross sales of at least \$6,000,000 per year.

Except for the above assignment caused by privatization, this Lease and Premises, in part or whole, shall not be alienated, by operation of law or otherwise, by being transferred, assigned, mortgaged, encumbered, sublet, or used (collectively, Alienations) to or by any other party (Alienee) without Landlord's prior written consent, which, if Tenant is not in default, then Landlord shall not unreasonably withhold, condition, or delay. If Tenant is in default of this Lease, or the Premises have been alienated once, and Tenant seeks again to alienate the Premises, then Landlord may, at its sole discretion, withhold, condition, or delay its consent. Landlord's consent shall not waive Landlord's rights, be acceptance of the Alienee as Tenant, nor release Tenant from this Lease and

any liability by this Lease. If Landlord's prior written consent is not obtained, then Landlord, at its sole discretion, and in addition to any other rights and remedies, may (a) void any Alienation and (b) collect rent from the Alienee and apply the net amount collected to Tenant's rent. Any Alienation agreement shall be in writing and Tenant shall promptly deliver copies of both the proposed agreement and the signed agreement to Landlord. Tenant shall promptly pay Landlord one-half of any rent due from any Alienation that exceeds Tenant's rent under this Lease in the aggregate, or proportionally by area.

11. PROPERTY DAMAGE AND LIABILITY INSURANCE:

- A. Coverage. Tenant shall maintain commercial general liability insurance with a combined single limit of not less than \$2,000,000.00 per occurrence and not less than \$2,000,000.00 in the aggregate. These limits do not apply to the self-insured County. As long as the Tenant is Montgomery County, the Tenant may elect to self-insure. If the Tenant is other than Montgomery County, the Tenant shall not self-insure.
- B. Policies. Tenant's insurance shall (a) be with a Best Co. A: Class X or higher rated company reasonably acceptable to Landlord, (b) name Landlord as an additional insured, (c) contain any reasonable provisions required by Landlord, including, but not limited to, reasonable deductible amounts, (d) give Landlord 30 days advance notice in writing before cancellation or modification, (e) insure for replacement cost, and (g) insure against any liability. Tenant shall give Landlord certificates of all policies before possession and before any policy expires.
- C. To the maximum extent this agreement may be made effective according

to law, Tenant agrees to indemnify and save Landlord harmless from and against all claims of whatever nature arising from any act, omission or negligence of Tenant, or Tenant's contractors, licensees, agents, servants or employees, or arising from any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring within the leased premises after the commencement date hereof, and until the end of the term of this lease, so long as Tenant has not assigned occupancy of any part of the premises of this Lease as provided in Section 10 hereof, excepting claims that may be filed by virtue of the negligence of the Landlord, the Landlord's employees, contractors, agents or servants.

- D. Landlord shall indemnify, defend and hold Tenant harmless from and against all liabilities, obligations and all claims of whatever nature arising from any intentional wrongful act or omission, or negligence, of Landlord or Landlord's contractors, licensees, agents, servants or employees, or arising from any accident, injury or damage whatsoever caused to any person, or to the property of any person, occurring within the leased premises after the commencement date hereof, and until the end of the term of this lease.
- E. Tenant further agrees that all equipment, trade fixtures or personal property in the leased premises shall be and remain at Tenant's sole risk, and Landlord shall not be liable for any damage to or loss of such equipment, trade fixtures or personal property arising out of the acts or omissions of the Tenant, Tenant's agents, servants and employees. Landlord shall be liable for any property damage caused by or through the negligence of the Landlord, the Landlord's agents, servants and

employees. Tenant shall be required to give Landlord written notice of repairs that are to be required to be made by Landlord as stipulated in this paragraph, and Landlord shall be given a reasonable opportunity to make the said repairs.

12. GOOD ORDER AND REPAIR: Tenant covenants and agrees to maintain the Leased premises in good order and condition, and surrender the same at the expiration or other termination hereof in good order and condition, usual wear and tear and damage by fire, storm, public enemies and any other act of God. Tenant will, at Tenant's sole expense, remove all trash from the premises that is generated by the Tenant

13. FURNITURE AND FIXTURES: Tenant shall have the privilege of installing any furniture and trade fixtures necessary in the conduct of Tenant's business, and the same shall remain the property of Tenant. Tenant shall remove all such fixtures and equipment at the expiration of the lease. In the event any damage is done to said premises in the installation or removal of said furniture and trade fixtures, Tenant will immediately make such repairs as are necessary to restore said premises to their original condition, or promptly reimburse the Landlord for the cost of such repairs.

14. LIENS: Tenant expressly covenants and agrees that it will, during the term hereof, promptly remove or release, by the posting of a bond or otherwise, as required or permitted by law, any lien attached to premises by reason of any act or omission on the part of Tenant, and hereby expressly agrees to save and hold harmless the Landlord from and against any such lien or claim of lien. In the event any such lien does attach, or any claim of lien is made against said premises, by reason of any act or omission upon the part of Tenant, and the said lien is not released within sixty (60) days after notice thereof, Landlord, in its sole discretion (but nothing herein contained shall be construed as requiring it so to do), may pay and discharge the said lien and relieve the said premises from any such lien, and Tenant agrees to pay and

reimburse Landlord upon demand for or on account of any expense which may be incurred by Landlord in discharging such lien or claim, which sum shall include the maximum legal interest rate per annum from the date such lien is paid by Landlord until the date Landlord is reimbursed by Tenant. Payment of such lien shall not be construed as an admission of liability or responsibility to any third party.

15. SIGNAGE: Tenant shall place no signs, awnings or curtains on any part of the exterior of said premises, nor paint any brick or stone work, cornice work, mill work or iron work on the front of said premise without the written consent of Landlord or his Agent first had and obtained. Tenant agrees that if the Landlord remodels the Shopping Center of which the leased space is a portion during the term, the Tenant will, at its own expense, upon the written request of the Landlord, within sixty (60) days, conform any existing signage to the format proposed by the Landlord, with the amount of area of the sign to which the Tenant shall be entitled in accordance with sign addendum.

The parties agree that Tenant shall install a Tenant Identification Sign in accordance with Lease Addendum Exhibit "B" Tenant Identification Sign. Tenant may place signs on the inside of the store front only in accordance with Lease Addendum #3- Shopping Center Provisions.

16. SIDEWALKS: Tenant shall maintain the sidewalks immediately abutting the Leased premises properly swept and free from trash. Landlord shall maintain all sidewalks and other walkways on the property of the Leased Premises which are considered common areas.

17. LANDLORD'S INSPECTION RIGHTS: Landlord shall have the right at all reasonable times to enter upon the premises for the purpose of inspecting same, making necessary repairs, or showing same to potential purchasers. Landlord shall have the further right during the last four (4) months of the Lease Term to bring prospective Tenants into the

premises for the purpose of showing same and during such period, Landlord may display "For Rent" signs in the windows of the premises.

18. GLASS PANE REPLACEMENT: Tenant, at Tenant's sole cost and expense, agrees to promptly replace any window or door glass pane that is broken, chipped or cracked, not as a result of structural failure or Landlord's negligence. Should the Tenant fail to effect a replacement within a reasonable period of time, the Landlord may perform this work and the Tenant shall reimburse Landlord for the cost thereof, as additional rent.

19. DEFAULT:

A. By Tenant: Any one of the following events shall constitute an event of default by Tenant under this Lease: (i) if Tenant fails to pay any Rent (or any installment thereof or additional rent) within ten (10) days after the same shall be due and payable and again fails to pay within 10 days after written notice having been made to the Tenant for same, (ii) if Tenant shall breach or substantially fail in the observance or performance of any of the terms, conditions or covenants of the Lease to be observed or performed by Tenant, other than those involving the payment of Rent and such breach or failure is not cured within thirty (30) days (or such period as may reasonable be required to correct the default with the exercise of due diligence) after Tenants receipt of written notice thereof, or (iii) if Tenant shall vacate, abandon or cease to continuously operate the Leased Premises as required.

1. Upon the occurrence of any event of Default described in this section, Landlord shall have all rights and remedies provided in this Section, in addition to all rights and remedies available under this Lease and the laws of the State of Maryland. Except that Landlord shall have no right to terminate or take other action

against Tenant based on the Default if Tenant cures the Default before such action is taken.

2. In the event of default by Tenant under this Lease, then Landlord may, by successive suits, recover the rent due hereunder or, at its option, may re-rent from time to time said premises for the account of the Tenant, and such re-renting may be for a term or terms equal to, less, or greater than the remaining term hereunder, provided the Tenant shall not be liable for any deficiency in rent for any part of the term of such re-renting beyond the term of this Lease, and Landlord shall be entitled to collect the rent accruing under such re-renting and to apply the same first to all costs and expenses, including commissions and attorney's fees incurred in connection with such re-renting and collection of rentals, and apply the balance of the deficiency in accrued rent under this Lease, and by successive suits recover any remaining deficiency from the Tenant. All remedies granted in this section or otherwise provided by law shall be cumulative and, unless inconsistent, may be exercised separately or concurrently, or successively. The Tenant shall be liable to the Landlord for the payment of reasonable attorney's fees and court costs.

- B. By Landlord: If the Landlord or Landlord's assigns shall fail or neglect to keep and perform each and every one of Landlord's covenants, conditions, and agreements as contained herein, and such failure or neglect is not remedied within thirty (30) days (or such period as may reasonably be required to correct the default with exercise of due diligence) after written notice from the Tenant

or Tenant's assigns specifying the default, then the Tenant or Tenant's assigns, at Tenant's option, may pursue any legal remedies available to Tenant. Landlord shall not be liable for damages or injury to person or property of Tenant or of any other person or business unless notice is given in writing of any defect (a) which Landlord has under the terms of this Lease the duty to correct, and, (b) which has caused such damage or injury and Landlord has reasonably been given notice of the defect and sufficient time to correct such defect and even then, only if such damage or injury is due to Landlord's negligence.

- C. In the event that proceedings shall at any time be commenced for recovery of possession as aforesaid and a compromise or settlement shall be effected either before or after judgment whereby Tenant shall be permitted to retain possession of said premises, then such proceedings shall not constitute a waiver of any condition or agreement contained herein or of any subsequent breach thereof or of this agreement.

20. TERMINATION BY INSOLVENCY: In the event of:

- A. The filing of a petition by or against Tenant for adjudication of Tenant as a bankrupt under the Federal Bankruptcy Act as now or hereafter amended or supplemented, or for reorganization of Tenant within the meaning of Chapter X of the Bankruptcy Act, or for an arrangement within the meaning of Chapter XI of the Bankruptcy Act, or the filing of any petition by or against Tenant under any future bankruptcy act for the same or similar relief; or

- B. The dissolution, or liquidation of Tenant, or the appointing of a receiver or trustee for a substantial portion of the property of Tenant, whether instituted by or against Tenant; or
- C. The taking possession of the property of Tenant by any governmental office or agency pursuant to statutory authority for the dissolution or liquidation of Tenant; or
- D. The making by Tenant of an assignment for the benefit of its creditors.

In the event of any of the above, then at the option of the Landlord, the Tenant's right of possession shall thereupon end and the Landlord may proceed to recover possession under the laws of the State of Maryland and seek any other remedy to which Landlord may be entitled under this Agreement and under the laws of the State of Maryland.

21. EMINENT DOMAIN:

- A. In the event that (at any time after the date of this lease) as the aggregate result of one or more takings by eminent domain, the capacity of the parking areas of the Shopping Center shall be reduced by twenty five percent (25%) or more, and if, within sixty (60) days after the occurrence of the most recent of such takings, Landlord at its option shall not have furnished substitute adjacent parking areas which shall meet with the Tenant's approval (Tenant agreeing that such approval shall not unreasonably be withheld), Tenant may terminate this Lease by written notice to Landlord sent at any time after the expiration of said sixty (60) day period. If (at any time after the commencement date of this Lease) as the aggregate result of one or more takings by eminent domain, the square footage of the leased premises shall be reduced by more than 10%, Tenant

may terminate this Lease by written notice to Landlord given not more than sixty (60) days from the date title rests in the condemning authority.

- B. Should the Tenant elect to remain in possession of the leased premises after any takings by eminent domain, the base rent and additional rents shall be reduced to reflect that proportion of the premises to which Tenant is denied normal occupancy as a result of the taking.
- C. Landlord reserves, and Tenant hereby assigns to Landlord, all rights to damages accruing on account of any taking by eminent domain of the leased premises, or the building of which they are a part, or the Shopping Center, or the leasehold hereby created.
- D. Although all damages in the event of any condemnation are to belong to the Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the leased premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or is recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

22. DAMAGE TO PREMISES: If the leased premises shall be damaged by fire or other insured casualty, not due to Tenant's negligence, but are not thereby rendered untenable in whole or in part, Landlord shall promptly at its own expense cause such damage to be repaired, and the base and additional rents shall not be abated. If by reason of any such

occurrence, the leased premises shall be rendered untenable only in part, Landlord shall promptly at its own expense cause the damage to be repaired, and the base and additional rents meanwhile shall be abated proportionately as to the portion of the leased premises rendered untenable. If the leased premises shall be rendered wholly untenable by reason of such occurrence, the Landlord shall promptly at its own expense cause such damage to be repaired and the base and additional rent meanwhile shall be abated in whole, provided however, that Landlord and Tenant shall each have the right, to be exercised by notice in writing delivered to the other within sixty (60) days from and after said occurrence, to terminate this Lease Agreement, and in such event this Lease and the tenancy hereby created shall cease as of the date of the said occurrence, the rent to be adjusted as of such date. If fifty 50% or more of the Shopping Center is destroyed, Lease can be terminated by the Landlord or Tenant.

23. SUBORDINATION: Tenant agrees that this Lease shall be subordinate to any mortgages or deeds of trust that may hereafter be placed upon the leased premises and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacement and extensions thereof, provided the mortgagee or trustee named in said mortgages or deeds of trust shall agree to recognize this Lease and the rights of Tenant hereunder. In the event of any mortgagee or trustee electing to have the lease a prior lien to its mortgage or deed of trust, then and in such event, upon such mortgagee or trustee notifying Tenant to that effect, this Lease shall be deemed prior in lien to the said mortgage or deed of trust, whether or not this Lease is dated prior to or subsequent to the date of said mortgage or deed of trust.

If any person shall succeed to all or part of Landlord's interest in the Leased Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of Lease or otherwise, Tenant shall, without charge, attorn to such successor-in-interest upon written request from Landlord.

24. ESTOPPEL CERTIFICATES:

the leasing of the building or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Landlord hereunder.

28. LANDLORD NOT A PARTNER: It is expressly understood that the Landlord shall not be construed or held to be a partner or associate of the Tenant in the conduct of Tenant's business; it being expressly understood that the relationship between the parties hereto is and shall remain at all times that of Landlord and Tenant.

29. FIRE EXTINGUISHERS: The Tenant shall be obligated to supply and maintain at its own cost and expense any fire extinguishers or other fire prevention equipment required by law, rules, orders, ordinances, regulations and/or recommendations of the City, County, State, Rating Bureau or Underwriters Association having jurisdiction in the area in which the leased premises are located.

30. LANDLORD'S TITLE AND COVENANT OF QUIET ENJOYMENT: Landlord covenants that it has full right and power to execute and perform this Lease, and that it will put Tenant into complete and exclusive possession of the leased premises. Landlord further covenants that Tenant, on paying the rents reserved herein and performing the covenants and agreements hereof, shall peaceably and quietly have, hold and enjoy the leased premises and all rights, easements, appurtenances and privileges thereunto belonging or in any way appertaining, during the full term of this lease, and any extension or renewals hereof.

31. FORCE MAJEURE: Anything in this agreement to the contrary notwithstanding, providing such cause is not due to the willful act or negligence of either party, neither party shall be deemed in default with respect to the performance of any of the terms, covenants, and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, warlike operation, invasion, rebellion, hostilities, military or upsurged power, sabotage, governmental

regulations or controls, inability to obtain any material, service through Act of God or other cause beyond the control of either party. For purposes of this provision, lack of funds shall not be considered a cause beyond the control of a party.

32. GENERAL PROVISIONS: It is further understood and agreed, that this instrument contains the entire agreement between the parties hereto and shall not be modified in any manner except by an instrument in writing executed by the parties hereto, and that the conditions and agreements herein are binding on, and may be legally enforced by the parties hereto, their executors, administrators, successors and assigns, respectively, and that no waiver of any breach of any condition or agreement contained herein shall be construed to be a waiver of that condition or agreement or of any subsequent breach thereof, or of this agreement. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number in any place herein in which the context may require such a substitution.

Accord and Satisfaction. No payment shall be deemed an accord and satisfaction.

Successors. Unless stated otherwise, all rights and obligations of the parties shall extend to their respective heirs, successors, and assigns.

Assignment by Landlord. Landlord may assign its rights without notice to or consent of Tenant.

Brokers. With regard to the Premises, Tenant warrants that it has not dealt with any finders, real estate agents, or brokers other than Steven Wetzler of CB Richard Ellis Commercial Real Estate.

Legal Fees. Nothing in this lease shall require Montgomery County to pay any attorney's fees, but if the tenant is any party other than Montgomery County the preponderantly defaulting party shall pay the preponderantly prevailing party's reasonable expenses, court costs, and attorney's fees in any (a) reasonable collection effort, or (b) proceeding to enforce the Lease.

Invalidity. All Lease provisions shall be enforced to full extent allowed by law. No provision shall be invalid because the provision, if enforced to its fullest, would be invalid. All of the Lease not declared invalid by a court shall remain in force.

Summary Proceedings. If Landlord commences any summary proceeding for failure to pay any money, Tenant shall not counterclaim.

Captions. Unless used otherwise, captions and numbers do not affect the Lease.

Covenants. Every provision that obligates Landlord/ Tenant is a covenant by Landlord/ Tenant.

Jurisdiction. This Lease shall be construed without regard to the author and only under the laws of Maryland. Any cause of action between the parties shall be tried only in Maryland state courts under both the substantive and procedural law of Maryland only.

No Option. The submission of this document is not an offer, option or reservation; this Lease becomes binding only on execution and delivery by both Landlord and Tenant.

33. NON-DISCRIMINATION: Landlord agrees to comply with the non-discrimination in employment policies in County contracts as required by Section 27-19 of the Montgomery County Code 1994, as amended, as well as all other applicable state and federal laws and regulations regarding employment discrimination. The Landlord assures the Tenant that in accordance with applicable law, it does not, and agrees that it will not discriminate in any manner on the basis of age, color, creed, ancestry, national origin, marital status, race, religious belief, sexual preference or disability.

34. CONTRACT SOLICITATION: Landlord represents that it has not retained anyone to solicit or secure this Lease from Montgomery County, Maryland, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling or leasing agencies maintained by the Landlord for the purpose of securing business or an attorney rendering professional legal service

consistent with applicable canons of ethics.

35. PUBLIC EMPLOYMENT: Landlord understands that unless authorized under Chapter 19A and 11B-52 of the Montgomery County Code 1994, as amended, it is unlawful for any person transacting business with Montgomery County, Maryland, to employ a public employee for employment contemporaneous with his or her public employment.

36. NON-APPROPRIATION: This Lease is subject to the appropriation of funds. If funds are not appropriated, for any reason whatsoever, the Lease will automatically terminate on July 1 of such year. Tenant shall provide Landlord with no less than forty-five (45) days' written notice of termination. The Tenant shall not make or be entitled to any claim for reimbursement of any kind, whether for improvements or prepaid items. Notwithstanding anything to the contrary in this Lease, if the Maryland legislature (a) directs the closing of this store and (b) appropriates money for the closing, then Tenant shall pay to Landlord all funds appropriated, but this amount shall not exceed the total of (a) the next SIX months' rent and (b) the cost of Landlord's Work. The cost of Landlord's work is deemed to be \$20,000.00 for purposes of this section.

37. WAIVER OF JURY TRIAL: Should any controversy arise by and between the parties concerning any of the terms and conditions contained in this Lease, or the payment of any monies due hereunder, each of the parties hereby knowingly, voluntarily and intentionally waives its right to a jury trial and freely elects to be tried by a court of competent jurisdiction without a jury in the State where the Leased Premises is located.

38. RULES AND REGULATIONS: Tenant will comply with all rules and regulations now in effect, or that may hereafter be enacted by the County, State or Federal Government, insofar as the same pertains to the conduct of the Tenant's business in the demised premises. Landlord shall not be liable for any violation of the Rules and Regulations; there are no Rules and Regulations as of lease signing.

39. MAILING NOTICES: All notices required or desired to be given hereunder by

either party to the other shall be given by hand delivery or certified or registered mail. Notice deemed given five (5) days after mailing or upon receipt or refusal to accept if hand delivered. Notices to the respective parties shall be addressed as follows:

LANDLORD:

Daniel, Daniel and Daniel  
c/o Standard Properties, Inc.  
5500 MacArthur Boulevard, NW  
Washington, D.C. 20016-2594

TENANT:

MONTGOMERY COUNTY  
Leasing Management  
Division of Facilities and Services  
110 North Washington Street, Suite 318  
Rockville, Maryland 20850

40. ENVIRONMENTAL:

- A. Prohibitions. Tenant shall prevent any section 40(A-C) Hazardous Materials and Emanations from being used, generated, stored, or disposed on, under, or about, or transported to or from the Premises or Building, other than small quantities of retail, household, or office chemicals that are (a) customarily sold over-the-counter to the public and (b) directly related to the Section 6 Permitted Use.
- B. Corrective Action. If any violation of section 8(1) Prohibitions occurs, Tenant shall promptly (a) notify Landlord by telephone and in writing and (b) remove, clean-up, dispose of, remedy, or stop any Hazardous Materials or Emanations.
- C. Hazardous Materials and Emanations. "Hazardous Materials or Emanations" include but are not limited to any pollutant, contaminant, toxic or hazardous waste, dangerous material, potentially dangerous material, noxious material, toxic material, flammable, explosive or radioactive material, including but not limited to biological or medical waste, mercury, lead, urea form aldehyde, asbestos, PCB's, X-rays, micro-waves, electromagnetic field or any other material or emanation, whose use or mere ownership is restricted, prohibited, regulated, or penalized by any and all federal, state, county, district, commission or municipal statute, laws, or regulations now or at any time hereafter in effect, including but not limited to the Comprehensive Environmental

Response, Compensation, and Liability Act (42 U. S. C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U. S. C. §§ 1801 *et seq.*), the Federal Water Pollution Control Act (33 U. S. C. §§ 1251 *et seq.*), the Clean Air Act (42 U. S. C. §§ 7401 *et seq.*), the Toxic Substances Control Act, as amended (15 U. S. C. §§ 2601 *et seq.*), and the Occupational Safety and Health Act (29 U. S. C. §§ 651 *et seq.*), as these laws have been amended or supplemented.

- D. Cooperation. At Landlord's request, Tenant shall truthfully complete any questionnaires and fully cooperate with any inspections or testing, including but not limited to removal of samples. All questionnaires, testing, and samples shall relate to the use or presence of Hazardous Materials or Emanations. If requested, Tenant shall provide Landlord with copies of Tenant's Material Safety Data Sheets.

41. LANDLORD'S RIGHT TO PERFORM: Even if Tenant is not in default, if Tenant fails to perform fully and promptly, then Landlord may, at Landlord's sole discretion after making reasonable efforts to contact Tenant, cure Tenant's failure, and Tenant shall pay the cure's reasonable costs.

## LEASE ADDENDUM #1 — TENANT'S OPTION TO EXTEND TERM

LA #1(a) Extension Term. In accordance with this LA #1, Tenant may extend the term once for one Five-year Extension Term only.

LA #1 (b) Requirements to Extend. Tenant may extend the term if and only if (a) Tenant is not in default, (b) the Lease is in force, (c) the Lease has not been assigned and the Premises has not been sublet, and (d) the date of Tenant's notice to Landlord is at least THREE months but not more than SIX months before the end of the initial Term. When Tenant gives Landlord notice that Tenant will extend the term, then the Term shall be extended. TIME IS OF THE ESSENCE FOR TENANT'S NOTICE TO LANDLORD.

LA #1 (c) Extension Initial Term Base Rent - Lease Year #6. The Base Rent of the first year of the Extension Term (Lease Year #6) will be the greater of (a) or (b):

- (a) An annual Base Rent of \$81,036.00, paid in equal monthly installments of \$6,753.00, or;
- (b) The "CPI-Adjusted Annual Rent", paid in equal monthly installments and as calculated by:

$$\frac{\text{CPI-U, December 2004}}{\text{CPI-U, December 1999}} \times \$69,900.00 = \text{CPI-Adjusted Annual Rent}$$

CPI-U is the U.S. Bureau of Labor Statistics' Consumer Price Index for all Urban Wage Earners (CPI-U) U.S. City Average, All items 1982-84=100, or the appropriate replacement index.

LA #1 (c) Extension Term Base Rent Subsequent Lease Years. By the same method as the Initial Term Base Rent Schedule, the Base Rent for each of the subsequent Extension Term Lease Years shall be increased by 3.00% of the Base Rent of the previous Lease Year.

LA #1 (d) Other Provisions. Unless noted otherwise, all other Lease terms and conditions, including but not limited to the payment of Additional Rent, shall remain the same during the Extension Term. If, at the start of any Extension Term, the customary insurance coverage for this type of lease and tenant has increased, then Tenant will increase its coverage.

Landlord: DANIEL, DANIEL, AND DANIEL 

Tenant: MONTGOMERY COUNTY, MARYLAND \_\_\_\_\_

October 18, 1999

## LEASE ADDENDUM #2—IMPROVEMENTS

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LA #2 (a) Landlord's Work. Landlord shall perform only the following "Landlord's Work". There is no other Landlord's Work. Unless noted otherwise, all work shall be building standard. Some improvements are already in place. Landlord shall provide and install only:

- 1 Floor. Concrete and/or tile floor ready for flashing by carpet installers.
- 2 Exterior walls. Ready for painting.
- 3 Storefront. Refurbish as required by Tenant.
- 4 Ceiling. 2 x 2 lay-in tile ceiling.
- 5 Lighting. 4-tube lay-in fixtures for 70 foot-candles at 3' height.
- 6 AC. Total of TEN tons.
- 7 Toilet Rooms. Provide TWO handicapped toilet rooms; demolish and remove other toilet rooms.
- 8 Tenant Separation Wall. Demolish and remove.
- 9 Stock-sales partition. One 8'-0" high stock- sales partition across width of store. Location to be determined by Tenant in field.
- 10 Code requirements. Exit signs and battery lights to meet code.
- 11 Construction permit. For Landlord's Work only.

LA #2 (b) Tenant's Work in General. Other than Landlord's Work, Tenant shall provide and install all necessary additional improvements for Tenant's business, including but not limited to fixtures, additional partitions, lighting, HVAC, modular office furniture, electrical distribution, special equipment, systems furniture, telephone wiring and systems, computer systems, alarm systems, etc., and any associated plans, permits, and code items, including but not limited to, fire suppression systems for specific equipment and low-voltage wiring permits.

LA #2 (c) Occupancy Permit. Tenant shall obtain all permits and licenses, including but not limited to the occupancy permit.

Landlord: DANIEL, DANIEL, AND DANIEL

Tenant: MONTGOMERY COUNTY, MARYLAND

October 18, 1999

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### LEASE ADDENDUM #3 — SHOPPING CENTER PROVISIONS

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LA #3 Part 1 Continuous Use. Notwithstanding anything to the contrary contained in this Lease, Tenant hereby agrees to continuously use and occupy the Premises during Tenant's normal business days and hours.

LA #3 Part 2 Hours of Operation. Tenant will remain open for business at least during the following:

Monday through Friday: 12:00 am to 6:00 PM

Saturday: 10:00 am to 5:00 PM

Thanksgiving, Christmas, New Year's, and Easter are excluded, as are closings because of acts of God, governmental holidays or other requirements, and impassable roads from snow or ice. Tenant may open additional hours with Landlord's reasonable consent. Tenant shall be open for business by December 1, 1999. Excluding holiday and weather closings, if the Premises remains closed for business for (a) any continuous period exceeding 14 days or for (b) an total of 12 days in any 12 month period, then the Landlord, at its sole discretion, may deem the Premises abandoned and Tenant in an Event of Default.

LA #3 Part 3 Door and Window Signs and Posters. All Tenant's signs and posters other than Tenant's Building Identification Sign are temporary, and Tenant may place reasonable temporary signs and posters only on the inside of Tenant's doors and windows. The total area (measured in one rectangle per sign) of signs in the doors and windows shall not exceed 10% of the glass area. Tenant shall remove or change all temporary signs and posters after 30 days.

LA #3 Part 4 Building Identification Sign. Tenant shall install one Tenant Identification Sign in accordance with Lease Exhibit "B" Tenant Identification Sign.

LA #3 Part 5 Employee Parking. For the convenience of all customers, Tenant and its employees shall park in the rear of the Center or in the parking spaces next to Route 355. Tenant shall prevent any vehicles from remaining on the parking lot overnight.

LA #3 Part 6 Exclusive Use. Landlord shall not lease any other store in the Center for exclusive use as a hard liquor retailer. In return, Tenant shall respect all other exclusive use clauses in any existing or future leases for all other stores in the Center. Tenant shall not sell any items other than hard liquor, beer, and wine.

LA #3 Art 7 Telephones. Tenant shall not install any exterior telephones for public use.

Landlord: DANIEL, DANIEL, AND DANIEL 

Tenant: MONTGOMERY COUNTY, MARYLAND \_\_\_\_\_

October 18, 1999

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2. Attachment of raceways to meet U. L. standards. No exposed wiring is permitted.
3. Tenant will be responsible for all damage to the building incurred during sign installation or removal.

F. SUBMITTAL FOR APPROVAL

1. Prior to awarding a contract for fabrication and installation, Tenant shall submit two (2) scaled drawings for final review and approval to the Landlord.
2. Elevation of building and sign band and sign shall be drawn at a minimum 1/4" = 1' scale.
3. Drawing shall indicate the following specifications: color and thickness of plexiglass face; type of materials; finish used on return; type of illumination and mounting method. Tenants sign company shall visit the site to verify existing conditions prior to preparation of shop drawings. Red is an acceptable color, Tenant shall submit plexiglass sample for final approval.

G. PERMITS. All permits and approvals from Standard Properties shall be obtained before the fabrication of a sign.

H. THE FOLLOWING ARE NOT PERMITTED

1. Animated or moving components.
2. Intermittent or flashing illumination.

Landlord: DANIEL, DANIEL, AND DANIEL

Tenant: MONTGOMERY COUNTY, MARYLAND

October 18, 1999

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be properly executed.

WITNESS:

By: Gene Ambrosio

TENANT:  
MONTGOMERY COUNTY,  
MARYLAND

By: William M. Mooney  
WILLIAM MOONEY, ASSISTANT  
CHIEF ADMINISTRATIVE OFFICER

Date: 10/29/99

WITNESS:

By: David Psaltis

LANDLORD:  
DANIEL, DANIEL AND DANIEL, a  
Washington, D.C. limited partnership

By: John L. Daniel

Title: Partner

Date: 10/21/99

APPROVED AS TO FORM AND LEGALITY  
OFFICE OF THE COUNTY ATTORNEY

By: Richard H. McDermott  
Associate County Attorney

Date: 10-15-99

RECOMMENDED

By: Rey Junquera  
REY JUNQUERA, LEASING MANAGER  
DIVISION OF FACILITIES AND SERVICES

Date: 10/26/99

DISK12: WALNUT HILL LIQ. LEASE

Landlord: DANIEL, DANIEL, AND DANIEL [Signature]

Tenant: MONTGOMERY COUNTY, MARYLAND \_\_\_\_\_

September 28, 1999